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8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

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11 PERCY JAMES PEARCE, )  
12 Plaintiff(s), ) No. C06-6357 BZ  
13 v. ) **ORDER DENYING PLAINTIFF'S**  
14 JOANNE B. BARNHART, ) **MOTION FOR RECONSIDERATION**  
15 Commissioner of Social )  
Security Administration, )  
16 Defendant(s). )  
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18 On June 25, 2007, plaintiff filed a motion for  
19 reconsideration relating to this Court's June 7, 2007 Order  
20 dismissing plaintiff's complaint for lack of jurisdiction.  
21 After requesting plaintiff to supply me with an exhibit  
22 discussed but not provided with his motion, plaintiff  
23 submitted the requested exhibit and an additional, lengthy  
24 motion for leave to file two additional exhibits.<sup>1</sup>

25 Civil Local Rule 7-9 provides a mechanism for parties to  
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27 <sup>1</sup> Although plaintiff's supplement went well beyond what  
I ordered him to do, I **GRANT** his motion for leave to file the  
28 additional exhibits and will consider them to the extent  
appropriate.

1 request leave of court to file a motion to reconsider  
2 interlocutory orders. See Hawks v. Kane, 2006 WL 3526743, at  
3 \*1 (N.D. Cal. 2006) ("Under local rule 7-9, a party may seek  
4 leave to file a motion for reconsideration any time before  
5 judgment."). I entered final judgment in this matter on June  
6 15, 2007. The judgment having "adjudicated all of the claims  
7 and the rights and liabilities of the parties in [the] case,"  
8 Civ. L. R. 7-9(a), reconsideration is not available under  
9 Local Rule 7-9.

10 Federal Rule of Civil Procedure 59(e), however, allows a  
11 party to seek alteration or amendment to a judgment if filed  
12 within ten days of its entry. Rule 59(e) is a proper vehicle  
13 for a party to seek substantive reconsideration of a summary  
14 judgment ruling, Tripati v. Hanman, 845 F.2d 205 n.1 (9<sup>th</sup> Cir.  
15 1988), and also may be utilized in the context of a motion to  
16 dismiss. See Zarcone v. U.S., 2004 WL 2196560 (N.D. Cal.);  
17 see also Greening v. U.S., 1994 WL 648027 (D. Or.)  
18 (reconsidering dismissal for lack of jurisdiction). Because  
19 plaintiff's motion was filed within ten days of entry of the  
20 judgment, I will consider his motion under Rule 59(e).

21 "There are four grounds upon which a Rule 59(e) motion  
22 may be granted: 1) the motion is necessary to correct  
23 manifest errors of law or fact upon which the judgment is  
24 based; 2) the moving party presents newly discovered or  
25 previously unavailable evidence; 3) the motion is necessary  
to prevent manifest injustice; or 4) there is an intervening  
change in controlling law." Turner v. Burlington N. Santa Fe  
R.R. Co., 338 F.3d 1058, 1063 (9<sup>th</sup> Cir. 2003) (internal

quotations and citations omitted). Rule 59(e) "offers an extraordinary remedy, to be used sparingly in the interests of finality and conservation of judicial resources." Kona Enters., Inc. v. Estate of Bishop, 229 F.3d 877, 890 (9<sup>th</sup> Cir. 2000) (internal quotations and citations omitted).

Plaintiff's motion rambles and is unpersuasive. As for the new documents plaintiff provides, Exhibit B purports to demonstrate defendant's "perjury" by impeaching dates on which certain hearings were alleged to have been opened and continued.<sup>2</sup> Insofar as the document demonstrates that his association with St. Vincent de Paul's in San Francisco began in December 2003, he also argues that the Oakland social security hearing in fact could not have occurred. The dates "impeached," however, had no impact on my conclusion that I lacked jurisdiction over plaintiff's complaint. Certainly, the inclusion of some incorrect dates by the ALJ in his order or by the defendant in her papers does not amount to "perjury" which, in turn, proves up a wide-ranging conspiracy to deprive plaintiff of his benefits. Moreover, plaintiff's unsworn assertion that no Oakland hearing occurred contradicts his own sworn declaration submitted in opposition to defendant's motion to dismiss. See Pearce Decl. at 2.

More broadly, plaintiff argues that I committed clear

<sup>2</sup> Exhibit B consists of a single page entitled "Homeless Verification." The document verifies that plaintiff utilized the services of the St. Vincent de Paul Society day center and/or shelter services from December 1, 2003 through June 15, 2007. Plaintiff also claims that he was unaware of the document prior to the issuance of my Order and, therefore, was omitted through no lack of diligence. I will consider Exhibit B based on plaintiff's representations.

1 error in dismissing his complaint. His contentions center on  
 2 an alleged inability to develop the record before the ALJ.<sup>3</sup>  
 3 According to Pearce, Exhibits C, D and E provide evidence of  
 4 his attempts to develop the record and to obtain access to  
 5 his social security file.<sup>4</sup> Plaintiff, however, does not  
 6 explain why these documents were not supplied during briefing  
 7 on the motion to dismiss and, therefore, should not be  
 8 considered. See Kona Enters., Inc., 229 F.3d at 890 ("A Rule  
 9 59(e) motion may not be used to raise arguments or present  
 10 evidence for the first time when they could reasonably have  
 11 been raised earlier in the litigation."). Worse, the  
 12 documents constitute unsworn hearsay. In any event,  
 13 plaintiff's arguments and evidence in no way undermine my  
 14 conclusion that the defendant's administrative processes  
 15 provided a meaningful opportunity to be heard and that  
 16 plaintiff failed to present a colorable due process claim.<sup>5</sup>

17 The remainder of plaintiff's motion either reiterates or

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18       <sup>3</sup> Pearce argued this point in his previous papers, and  
 19 I explicitly analyzed the issue in my June 7 Order. See Order  
 20 Granting Defendant's Motion to Dismiss, at 6-7. It is  
 21 inappropriate to repackage this argument in a motion for  
 22 reconsideration. See Washington v. USDC Southern California,  
 23 2007 WL 1795783, at \*3 (S.D. Cal. 2007). Nevertheless, I will  
 24 consider plaintiff's contention.

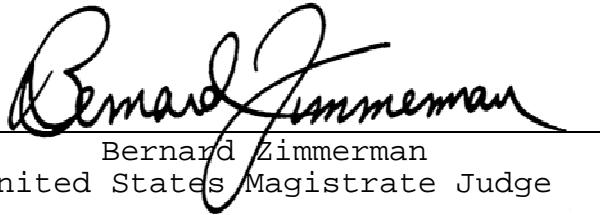
25       <sup>4</sup> Exhibit C consists of a single page of notes, written  
 26 by an unknown author on an unknown date, relating to  
 27 plaintiff's social security case. Exhibit D is a copy of a fax  
 28 sheet prepared by an advocate representative at the General  
 Assistance Advocacy Project. The comments request access to  
 plaintiff's file prior to a January 2002 ALJ hearing. Exhibit  
 E consists of a single page of notes, apparently written by  
 plaintiff himself, around the time of the various hearings.

29       <sup>5</sup> In particular, plaintiff still fails to explain why  
 30 he ignored defendant's notices requesting explanation as to why  
 31 his appeal of the ALJ decision was filed untimely.

1 attempts to expand upon arguments presented in defending  
 2 against dismissal, addresses the merits of his disability  
 3 claim, or argues for equitable tolling. Motions for  
 4 reconsideration are not to be used to reargue or repackaging  
 5 previously presented arguments. See Washington v. USDC  
 6 Southern California, 2007 WL 1795783, at \*3 (S.D. Cal. 2007).  
 7 Plaintiff's arguments going to the merits of his claim are  
 8 simply irrelevant to the threshold issues resolved on  
 9 defendant's motion for dismissal. Plaintiff's argument for  
 10 equitable tolling was addressed in my previous Order. See  
 11 Order Granting Defendant's Motion to Dismiss, at 7 n.10. In  
 12 any event, nothing presented here constitutes newly  
 13 discovered evidence or reveals errors of law or fact.<sup>6</sup>

14 Because plaintiff's motion does not present cause for  
 15 reconsideration of my dismissal of his complaint, his motion  
 16 is **DENIED**.<sup>7</sup>

17 Dated: August 3, 2007

  
 18 Bernard Zimmerman  
 19 United States Magistrate Judge

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21       <sup>6</sup> Plaintiff repeatedly asserts that various  
 22 governmental actors conspired to "obliterate" the record of an  
 23 earlier hearing and to otherwise prevent him from pursuing his  
 24 claim. These arguments were presented and considered in  
 25 relation to the motion to dismiss. To the extent plaintiff  
 presents new evidence on the alleged conspiracy, I conclude  
 that his assertions are without factual or legal support.

26       <sup>7</sup> As an alternative to reconsideration, plaintiff  
 27 requests that I grant his "Motion to File Plaintiff's Notice of  
 Appeal." I need not grant plaintiff permission to file an  
 28 appeal. If plaintiff wishes to appeal dismissal of his  
 complaint, he will need to comply with the Federal Rules of  
 Appellate Procedure and, in particular, Rules 3 and 4.